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FG Hemisphere Associates, LLC*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FG HEMISPHERE ASSOCIATES, LLC,

Plaintiff-Judgment-Creditor,

v.

DEMOCRATIC REPUBLIC OF CONGO, *et ano.*,

Defendants-Judgment-Debtors.

19-mc-00232-JPO

**DECLARATION OF PETER
GROSSMAN IN SUPPORT OF
PLAINTIFF'S MOTION**

PETER GROSSMAN being duly sworn and deposed says:

1. I am the Managing Director of plaintiff FG Hemisphere Associates, LLC ("Plaintiff"). As such, I am familiar with the facts and circumstances underlying this dispute and respectfully submit this declaration in support of Plaintiff's motion pursuant to Rules 64 and 69 of the Federal Rules of Civil Procedure and Article 52 of the New York Civil Practice Law and Rules seeking writs of execution, expedited discovery, restraining notices in aid of enforcing outstanding judgments against the Democratic Republic of Congo ("DRC") and a turnover of assets in the possession of third-party garnishees.

2. The information contained herein is based upon my personal knowledge, or upon documents kept in the regular course of business by Plaintiff.

THE JUDGMENTS AND INVESTIGATION

3. Plaintiff holds two final, enforceable and unpaid judgments ("Judgments"), as defined in the August 10, 2021, Declaration of Warren Gluck, (Gluck Decl.) ¶¶ 2-3, in support of Plaintiff's motion, against the Judgment Debtors, the principal amount of which exceeds \$30 million, plus accruing interest. During several of Plaintiff's attempts to settle the Judgments amicably, it became apparent that senior DRC officials were unwilling to do so absent the Plaintiff engaging in bribery and/or money laundering. Plaintiff refused to engage in such schemes, making settlement of the Judgments impossible. Contemporaneously, others who engaged in corruption had their debts paid in full. Moreover, the DRC has gone to considerable lengths to undermine the enforcement of the Judgments. The DRC has been in contempt of the discovery orders of United States District Court for the District of Columbia for over a decade. Plaintiff now knows – after years of painstaking investigation – that the DRC submitted materially false testimony and evidence in other proceedings with the (ultimately successful) intention of undermining Plaintiff's enforcement of the Judgments.

4. Because of the DRC's unwillingness to enter into a lawful settlement with Plaintiff and the DRC's willingness to do whatever it takes to undermine Plaintiff's enforcement of the Judgments, Plaintiff has had little choice but to engage in a years-long investigation into where the DRC's substantial assets, particularly its mineral rights and revenues derived therefrom, are actually ending up. Plaintiff's investigation has revealed a sprawling conspiracy (the "DRC Embezzlement Enterprise") among Joseph Kabila ("Kabila"), the former President¹ of the DRC, a number of his family members, close associates, certain lawyers—as well as certain companies

¹ Kabila was in power from 2001-2019.

and banks operating within the DRC—to misappropriate billions of dollars of the DRC state assets for their own personal benefit.

5. Various criminal investigations in the United States and United Kingdom substantiate key elements of the DRC Embezzlement Enterprise. In 2016, a subsidiary of a New York-based investment fund then known as Och-Ziff Capital Management Group, LLC (“Och-Ziff”) pleaded guilty to a conspiracy to violate the Foreign Corrupt Practices Act in relation to Och-Ziff’s dealings in the DRC. The Statement of Facts from that criminal prosecution shows that Och-Ziff’s co-conspirator, Dan Gertler (“Gertler”) paid tens of millions of dollars in bribes to Kabila and his now-deceased chief advisor Augustin Katumba Mwanke (“Katumba”), along with the DRC attorney general and several justices of the DRC Supreme Court. This was done to secure privileged access to DRC mineral assets for a fraction of their true market value, including having mineral rights previously awarded to another company stripped through the corruption of the DRC courts. Attached hereto as **Exhibit 1** is a true and correct copy of the guilty plea of an Och-Ziff subsidiary and the accompanying Statement of Facts. Although the Statement of Facts refers to Gertler, Kabila and Katumba as, respectively, “DRC Partner”, “DRC Official 1” and “DRC Official 2”, they are easily identifiable through details contained in the Statement of Facts.

6. Och-Ziff is far from the only one who conspired with Gertler, Kabila and Katumba to secure and maintain privileged access to DRC state assets – primarily mineral rights – through the payments of bribes and the ongoing payment of kickbacks of revenues derived from these mineral rights. A recent judgment of Switzerland’s federal appeals court (the “Swiss Judgment”) extensively quotes from affidavit evidence and primary documentation obtained by the UK’s Serious Fraud Office (the “SFO”) during the SFO’s own investigation into part of the DRC Embezzlement Enterprise. Attached hereto as **Exhibits 2** and **3** are a true and correct copy of the

Swiss Judgment and a translation of the portion of the judgment discussing the affidavit evidence and the primary documentation.²

7. The Swiss Judgment is the result of an unsuccessful challenge brought by an unidentified company whose Swiss bank records were sought during the SFO's investigation. The Swiss Judgment, referencing the affidavits and primary documentation, describes a portion of a larger, sophisticated professional money laundering organization ("PMLO"), which forms part of the DRC Embezzlement Enterprise. Between the years 2006 and 2011 (the time frame covered by the affidavit evidence - the scheme continued after that), Gertler "borrowed" \$360,292,535 in cash from the PMLO in the DRC. Gertler then used this cash to pay bribes to Katumba, who is described as Kabila's "*bras droit*" or "right arm", and other DRC government officials to secure and maintain access to DRC mining assets. Gertler would then "repay" these loans by causing his lawyers to wire funds to the Swiss bank accounts of other entities forming part of the PMLO. Although Gertler, Kabila and Katumba are respectively referred to as "C", "L" and "M" in the Swiss Judgment, they are identifiable through details provided therein. Attached hereto as **Exhibits 4** and **5** are true and correct copies of news reports regarding the Swiss Judgment, which substantiate the identities of "C", "L" and "M": *Bribe Totaling \$360m: Docs Presented by Israeli Billionaire Dan Gertler Embroil Him in One of Biggest Graft Probes Ever*, HAARETZ, 15 Jul. 2021, and *Court documents show Gertler at centre of \$360m cash laundry*, AFRICA CONFIDENTIAL, 15 Jul. 2021.

8. As Och-Ziff was just part of Gertler's broader scheme to obtain assets through corruption, Gertler is just part of a much broader system of bribery, money laundering and

² I am proficient in French and an attorney admitted to practice in the State of New York. The primary purpose of the Swiss Judgment is to address challenges made by "A Ltd." to the SFO's mutual legal assistance request to Switzerland. The DRC Embezzlement Enterprise is not the primary subject matter of the Swiss Judgment. Components of the DRC Embezzlement Enterprise are only addressed in great detail at paragraph 4.2 of the Swiss Judgment and thus, for the current purposes, only that paragraph has been translated. The substance of the judgment is also confirmed by **Exhibits 4** and **5**.

embezzlement which extends far beyond the mining sector. For instance, in addition to Gertler, numerous international companies with interests in the DRC have been making many hundreds of millions of dollars of payments to this same PMLO, which is still in operation. That is, the broader DRC Embezzlement Enterprise is an expansive, international criminal conspiracy, through which senior DRC officials and their co-conspirators have embezzled countless DRC assets. The part of the enterprise sited in New York and thus directly implicated in the present proceedings is but a small subset of the larger whole.

9. Key findings of Plaintiff’s investigation in respect of the facts that are relevant to the present proceedings are set forth in substantial detail below. In summary, Plaintiff has obtained extensive evidence showing that over twelve million dollars – and perhaps as much as twice that amount – was embezzled by Kabila’s family members and closest associates, as well as other senior DRC officials, from the New York-sited bank accounts of the DRC’s Permanent Mission to the United Nations (“DRC Mission”). While a large portion of the embezzled funds has been laundered outside of the United States or has been spent or otherwise dissipated, the co-conspirators have millions of dollars of property located in the United States, nearly all of which is directly traceable to these embezzled funds. As detailed below at ¶ 18, nearly all the embezzled funds originate with the UN and appear to be monies owed by the UN to the DRC in relation to the UN’s peacekeeping mission in the DRC.

THE DRC EMBEZZLEMENT ENTERPRISE – KEY NEW YORK CO-CONSPIRATORS AND ACCOUNTS

10. The key New York-based co-conspirator of the DRC Embezzlement Enterprise is Ignace Gata Mavita wa Lufuta (“Gata”), who was the DRC’s permanent representative to the United Nations (“UN”), and thus the highest-ranking DRC official at the DRC Mission, from 2012 through at least early 2020. Records indicate he is still an official at the DRC Mission although it

is unclear if he is still the permanent representative.³ Records produced to Plaintiff by Citibank and the UN Federal Credit Union (“UNFCU”) show that Gata – at all relevant times⁴, i.e., during the embezzlement – controlled and was the primary (if not only) signatory to the DRC Mission’s bank accounts.

11. The DRC Mission held a checking account at Citibank in New York from 1997 until it was closed in 2018 (“DRC Mission Citibank Account”). In 2017, the DRC Mission opened checking and savings accounts at the UNFCU in New York (collectively, the “DRC Mission UNFCU Accounts” and individually, the “DRC Mission UNFCU Checking Account” and “DRC Mission UNFCU Savings Account”). Attached hereto as **Exhibits 8** and **9** are true and correct copies of the DRC Mission Citibank Account⁵ and the DRC Mission UNFCU Accounts statements produced to Plaintiff by Citibank and the UNFCU.

12. Gata holds or held several personal accounts at the UNFCU in New York, including Membership Savings Account [REDACTED]0001 (“Gata UNFCU Savings Account”), Premium Checking Plus Account [REDACTED]0002 (“Gata UNFCU Checking Account”), a Visa credit card account (“Gata Credit Card Account”), and Mortgage Loan Account [REDACTED]8540 (“Gata Mortgage Loan”). Attached hereto as **Exhibits 10, 11, and 12** are true and correct copies of the account statements for the Gata UNFCU Savings and Checking Account, the Gata Credit Card

³ Correspondence between the DRC Mission and the UNFCU indicates that Gata is no longer the DRC’s permanent representative as of early 2020. The DRC Mission, however, continues to pay his salary, which is deposited into Gata’s US bank accounts, which would evidence that he is still employed by the DRC Mission. Attached hereto as **Exhibits 6** and **7** is correspondence with the UNFCU indicating Gata is no longer permanent representative as of early 2020 and bank records showing he is still being paid a salary by the DRC Mission after this date.

⁴ All of the events relevant to this declaration occurred between 2015 and 2019 when Gata was permanent representative and the apparent sole signatory to the Citibank and UNFCU Accounts. Although records from Citibank indicate that account had another co-signer, that person appears to have no longer been at the DRC Mission as of 2015 – the beginning of the relevant events. This is based on the fact that, *inter alia*, the DRC Mission Citibank Account records show DRC Mission made no payments to the co-signer.

⁵ The DRC Mission Citibank Account was closed in 2018, meaning there are no statements for this account post-dating its closure.

Account⁶ and the Gata Mortgage Loan produced to Plaintiff by the UNFCU. These statements, as a whole, are important for tracing the funds embezzled from the DRC Mission to Gata's personal accounts and for establishing the use of the funds as the funds were frequently moved among accounts. That is, embezzled funds wired from the DRC Mission Accounts were moved from the Gata UNFCU Checking Account to the Gata UNFCU Savings Account and then transferred to the Gata Credit Card Account and the Gata Mortgage Loan.

13. In addition, Citibank produced separate documentation showing all incoming and outgoing wires going to and from the DRC Mission Citibank Account. Attached hereto as **Exhibits 13** and **14** are true and correct copies of records showing incoming and outgoing wires to and from the DRC Mission Citibank Account. The UNFCU produced separate documentation for certain wires received by the DRC Mission UNFCU Accounts. Attached hereto as **Exhibit 15** are documents showing incoming wires from the UN to the DRC Mission UNFCU Savings Account.

14. Gata signed over 1,300 checks drawn upon the DRC Mission Citibank Account and around 280 drawn upon the DRC Mission UNFCU Accounts. Attached hereto as **Exhibits 16** and **17** are true and correct copies of checks drawn upon the DRC Mission Citibank Account and the DRC Mission UNFCU Accounts. Gata also corresponded with the UNFCU to arrange wire transfers of embezzled funds. Attached hereto as **Exhibit 18** are true and correct copies of the correspondence from Gata to the UNFCU.

HISTORY OF TRANSFERS FROM THE UN TO THE DRC MISSION

15. Between December 2011 (the period covered by the oldest statement produced by Citibank) and March 2015, the DRC Mission Citibank Account only received a handful of *de*

⁶ As the Gata Credit Card Account is only relevant to show what he did with the embezzled funds, the exhibited statements only include those post-dating the commencement of the embezzlement.

minimis wire transfers from the UN.⁷ Beginning in March 2015 and continuing until at least March 2017, the UN began making periodic, large wire transfers to the DRC Mission Citibank Account, which received a total of \$25,073,093.06 from the UN during that time. To put this amount into perspective, the amount the UN paid into the DRC Mission Citibank Account in this two-year period exceeds all the payments made by the DRC government (\$19,697,381.96) to the DRC Mission in the near ten-year timeframe covered by the bank records obtained by Plaintiff.⁸

16. For two decades, the UN has maintained a peacekeeping mission in the DRC. According to information published by the UN, the UN reimburses states for certain expenses associated with UN peacekeeping missions. Attached hereto as **Exhibit 19** is information published by the UN on its peacekeeping funding and expenditures.

17. Although the wires from the UN to the DRC Mission Citibank Account do not indicate a purpose, onward transfers of these funds describe them as, inter alia, “TRANSFER OF THE REIMBURSEMENT FUNDS FROM UN IN FAVOR OF THE D.R. CONGO TREASURY”, “REIMBURSEMENT UN FUNDS - D.R CONGO”, and “FONDS DRC PEACEKEEPING”. **Exhibit 14**, 2, 4-5. It is thus reasonable to infer from these descriptions that these wires from the UN were reimbursements to the DRC associated with the UN’s DRC peacekeeping mission. Statistics published by the UN indicate the US government is by far the largest single financial contributor to UN peacekeeping missions, providing roughly 27% of budget. **Exhibit 19**, 2.

18. In total, the DRC Mission Citibank Account and DRC Mission UNFCU Accounts received thirteen wires from the UN between 2015 and 2019. The following table contains a

⁷ On February 19, 2014, the Citibank Account received \$7,204.40 from the UN, and on October 20, 2014, the account received \$8,987.00 from the UN. **Exhibit 8**, 67, 85.

⁸ The records obtained from Citibank begin in December 2011, and the latest account statement produced by the UNFCU is from April 2021.

summary of those wires. Plaintiff has grouped the wires from the UN into tranches based on how the proceeds of those wires were later distributed.

<u>Date</u>	<u>UN Wire Amount</u>	<u>DRC Mission Account</u>	<u>Description</u>	<u>Quantum of Tranche</u>
3/4/15	\$263,736.00	Citibank	First Tranche	\$13,391,928.00
3/4/15	\$1,707,624.00	Citibank		
3/19/15	\$3,845,484.00	Citibank		
6/18/15	\$3,804,192.00	Citibank		
9/17/15	\$490,176.00	Citibank		
9/18/15	\$3,280,716.00	Citibank		
12/10/15	\$3,734,523.00	Citibank	Second Tranche	\$7,335,649.00
3/16/16	\$3,601,126.00	Citibank		
6/15/16	\$717,132.00	Citibank, then UNFCU	Third Tranche	\$1,105,303.50
12/12/16	\$388,171.50	Citibank, then UNFCU		
3/20/17	\$3,240,212.56	Citibank, then UNFCU	Fourth Tranche	\$3,240,212.56
6/18/18	\$240,595.92	UNFCU	Fifth Tranche	\$240,595.92
4/12/19	\$452,528.66	UNFCU	Sixth Tranche	\$452,528.66
			TOTAL:	\$25,766,217.64

19. Of the \$25,766,217.64 deposited by the UN into the DRC Mission Citibank and UNFCU Accounts, \$12,172,354.00⁹ is known to have been embezzled by the DRC Embezzlement Enterprise, as detailed below, and the fate of roughly \$13 million is unknown. For reasons set forth at ¶¶ 54-57, this \$13 million very well also may have been lost to the DRC Embezzlement Enterprise. The specific bank account to which the bulk of those funds (\$13,391,928.00) was wired is associated with the disappearance of other DRC funds, and the holder of that account (the

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<u>Description</u>	<u>Amount</u>
Embezzled by Sud Oil	\$ 6,809,854.00
Embezzled by Gata	\$ 2,620,000.00
Embezzled by Co-Conspirators (Known)	\$ 2,292,500.00
Embezzled by Co-Conspirators (Inferred)	\$ 450,000.00
TOTAL	\$ 12,172,354.00

DRC Central Bank) contemporaneously made substantial payments to companies close to Kabila which form part of the DRC Embezzlement Enterprise.

FIRST TRANCHE

20. Between March 2015 and mid-September 2015, the DRC Mission Citibank Account received \$13,391,928 in six wire transfers from the UN. **Exhibit 13**, 5-6, 8-9, and 12-13. On October 28, 2015, the DRC Mission transferred this exact amount from its Citibank Account to account number [REDACTED] 02-69 USD held by the DRC Central Bank at Rawbank (“DRC Central Bank Rawbank Account”), a bank based in the DRC. **Exhibit 14**, 2. Plaintiff has serious doubts, however, that these funds – the First Tranche – benefitted the DRC Central Bank, rather than the DRC Embezzlement Enterprise. As to not interrupt the analysis of the flow of funds of the other tranches, this is addressed in detail at ¶¶ 54-57 below.

SECOND TRANCHE

21. In December 2015 and March 2016, the UN made two more wire transfers to the DRC Mission Citibank Account, totaling \$7,335,649.00. **Exhibit 13**, 9. On April 22, 2016, the DRC Mission wrote a check for \$30,600 to The New York Times. **Exhibit 15**, 1306. On Sunday, April 26, 2016, a full-page advertisement appeared in The New York Times touting President Kabila’s purported accomplishments, claiming:

With hindsight, it is clear that President Joseph Kabila has probably written the most beautiful political, security, economic and social pages of the Democratic Republic of Congo, a country which was only a name of his accession to power in 2001. The pages written by him are the best because they bring about hope, hope for a better future for the Congolese people impoverished by decades of bad governance.

Attached hereto as **Exhibit 20** is a true and correct copy of The New York Times advertisement.

22. Despite the claimed “hope for a better future”, the events that occurred in the immediate wake of this advertisement underscore that the Congolese people, in truth, remained “impoverished by decades of bad governance” under Kabila.

23. Three days after the advertisement, on April 29, 2016, the DRC Mission wired from its Citibank Account \$6,809,899 of the \$7,335,649.00 comprising the Second Tranche to a purported DRC Central Bank account held at the DRC subsidiary of an international bank known as BGFI (“BGFI DRC”). **Exhibit 14**, 2. Later in 2016, it was publicly revealed that Kabila’s brother, Francis Selemani Mtwale (“Selemani”), was the chief executive of BGFI DRC, while Kabila’s sister, Gloria Mteyu, owned 40% of BGFI DRC. Attached hereto as **Exhibit 21** is a true and correct copy of *With His Family’s Fortune at Stake, President Kabila Digs In*, BLOOMBERG NEWS, 14 Dec. 2016.

24. The outgoing wire information from Citibank abbreviates the originator of the wire, i.e., the DRC Mission, as “PERM. MISSION OF REP OF C”. **Exhibit 14**, 2. Although Plaintiff has reviewed thousands of wire transfers to and from the DRC Central Bank, the DRC Central Bank account number for its purported account at BGFI DRC contained in the wire does not appear in any other wire transfers. Rather, it seems, this wire contained fraudulent beneficiary and account information designed to induce Citibank to wire the funds to BGFI DRC where they could be embezzled by members of Kabila’s family and his closest associates.

25. Records from BGFI DRC show that BGFI DRC did not credit these funds to the DRC Central Bank’s purported account, but rather BGFI DRC deposited the funds from the DRC Mission into the account of a company called Sud Oil Sprl (“Sud Oil”). Attached hereto as **Exhibit 22** is a true and correct copy of records for account number [REDACTED] 14-36 held by Sud Oil at BGFI DRC (“Sud Oil BGFI Account”). On May 16, 2016, BGFI DRC credited \$6,809,854.00

(the quantum of the wire originating with DRC Mission Citibank Account minus an apparent \$45 fee) to the Sud Oil BGFI Account. **Exhibit 22**, 4-5. The Sud Oil BGFI Account records show the originator of the funds deposited by BGFI DRC into the Sud Oil BGFI Account as “PERM. MISSION OF REP OF C”, that is, the exact same abbreviation used in the Citibank outgoing wire records. **Id.**

26. Sud Oil is wholly-owned by Mteyu and Selemani’s wife – that is, Kabila’s sister and sister-in-law – and the Sud Oil BGFI Account itself is controlled by Kabila’s closest associates. Attached hereto as **Exhibit 23** is a true and correct copy of Sud Oil’s corporate minutes, which show that Mteyu owns 20% of the company and Aneth Michael Lutale, the wife of Selemani, the other 80%.¹⁰

27. Ferme Espoir Sprl (“Ferme Espoir”) is a DRC-incorporated company which is wholly-owned by Kabila (80%) and his children (20%). Marc Piedboeuf (“Piedboeuf”) is the manager and representative of Kabila’s Ferme Espoir. Attached hereto as **Exhibits 24** and **25** are true and correct copies of the articles of incorporation of Ferme Espoir, reflecting its shareholding¹¹,

¹⁰ The minutes are in French. The following is a translation of the relevant portion of those minutes:

The partners of Sud Oil, a private limited liability company with a share capital of 100,000,000 FC, and headquartered in Kinshasa, in the Commune of Gombe, met for an Ordinary General Assembly on March 20, 2014, at eight o'clock on convocation made by the manager by simple letters addressed to each partner.

An attendance sheet was drawn up, which was signed by each partner present when they entered the meeting, both personally and as a proxy.

I. Quorum

The partners mentioned below are present or validly represented:

1. Mrs. Aneth Michael Lutale, residing [REDACTED], owner of 80% of the shares;

2. Mrs. Gloria Mteyu, domiciled at [REDACTED], owner of 20% of the shares.

The shareholders present owning all of the shares which form the share capital recognize that they are validly constituted at a General Meeting and declare that they waive all the prior convocation formalities.

¹¹ The Articles of Incorporation are in French. The following is a translation of the relevant portion of those articles:

Ferme Espoir Sprl
Private Limited company
Constitution and statutes.
Between the undersigned :

and the minutes of a company owned by Ferme Espoir, which shows Piedboeuf is its manager and representative¹².

28. Nine days after BGFI DRC credited the wire from the DRC Mission to the Sud Oil BGFI Account, Piedboeuf withdrew \$640,000 in cash from the Sud Oil BGFI Account, evidencing the *de facto* control of Kabila's closest associates over Sud Oil, in addition to the *de jure* involvement of Kabila's sister and sister-in-law. **Exhibit 22**, 5. In other words, the DRC's purported diplomatic bank account in the United States and the funds therein had been used for classically commercial (albeit here seemingly criminal) activity—holding funds on deposit for the benefit of private parties and then transferring those funds through fraudulent wire transfer instructions to those private beneficiaries.

GATA'S SHARE OF THE SPOILS OF CORRUPTION

29. The DRC Mission did not wire the entirety of the Second Tranche to Sud Oil. Rather, the DRC Mission retained \$525,750¹³ of the Second Tranche in the DRC Mission Citibank

Joseph Kabila Kabange, born in Hewa Bora on June 4, 1971; [REDACTED] Kabange, minor child, born in Windhoek, [REDACTED] and [REDACTED] Kabila, minor child, born in Kinshasa, [REDACTED], represented in this document by their father Joseph Kabila Kabange, all of Congolese nationality, residing in Kinshasa at the intersection of Boulevard Colonel Tshatshi and Avenue de l'Ouganda, in the Commune of Gombe

The shares are subscribed as follows:

- Joseph Kabila Kabange: 400 shares (80%) or 400,000 USD;
- Joséphine Sifa Kabange: 50 shares (10%) or 50,000 USD;
- Laurent Désiré Kabila: 50 shares (10%) or 50,000 USD.

¹² The minutes are in French. The following is a translation of the relevant portion of those minutes:

The company Ferme Espoir Sprl, registered with the NRC of Lubumbashi under no. 2381, whose head office is located at no. 15 avenue Hewa Bora in the Municipality of Kampemba in the City of Lubumbashi, acting through its manager Mr. Marc Piedboeuf; Having the entirety of 236.157 (two hundred and thirty-six one thousand one hundred and fifty-seven) shares making up the share capital.

¹³

12/10/15	Wire from UN	\$3,734,523.00
3/16/16	Wire from UN	\$3,601,126.00
4/29/16	Wire to "DRC Central Bank"	-\$6,809,899.00
BALANCE:		\$525,750.00

Account, which funds were ultimately dissipated to Gata. In April 2017, the DRC Mission for the first time began making large payments to Gata above and beyond his customary compensation from the DRC Mission. These payments totaled over two million dollars over a matter of months. These payments were made both from the DRC Mission Citibank Account and DRC Mission UNFCU Accounts to the Gata UNFCU Accounts.

30. Based on both the prior history of the DRC Mission Citibank Account, Gata's UNFCU Accounts and Gata's own representations about his income while obtaining loans, these payments were not part of his compensation. Gata, again, held his position at the DRC Mission since 2012, and until 2017 – that is, until the DRC Mission was flush with funds from the UN – the DRC Mission Citibank Account had made no wires to Gata, let alone wires totaling \$510,000 in an eight-month period. In addition, as addressed in the analysis of the Third and Fourth Tranches, Gata embezzled another \$1.5 million of UN funds from the DRC Mission UNFCU Account in September 2017.

31. In March 2017 – immediately prior to Gata's embezzlement of the Second Tranche from the DRC Mission accounts – the Gata UNFCU Accounts held \$150,056.16. Exhibit 10, 169. Nine months later in December 2017, the balance of the Gata UNFCU Accounts had ballooned to \$1,970,048.39, and this is after he used \$400,000 from the Gata UNFCU Accounts to purchase residential real estate. Id., 208.

32. The first of the wires from the DRC Mission Citibank Account to Gata occurred on April 3, 2017 when the Gata UNFCU Checking Account was wired \$100,000. The purpose of this wire was given as “house down payment”. Exhibit 14, 5. From there, Gata transferred \$98,000 of those funds to the Gata UNFCU Savings Account. Exhibit 10, 173 and 175. Gata then used those funds to purchase real property in Pennsylvania (registered in his own name), located at

██████████ (“Gata Pennsylvania Residence”). Attached hereto as **Exhibit 26** is a deed for the Gata Pennsylvania Residence. On April 19, 2017, Gata obtained a cashier’s check for \$128,000, which was debited from the Gata UNFCU Savings Account. **Exhibit 10**, 173. A closing statement for the Gata Pennsylvania Residence shows that Gata owed \$127,519.69 at closing, which occurred on April 21, 2017 – two days after Gata obtained the \$128,000 cashier’s check. Attached hereto as **Exhibit 27** is a true and correct copy of the Gata Pennsylvania Residence closing statement. The balance of the purchase consideration for the Gata Pennsylvania Residence was provided by a \$400,000 mortgage from the UNFCU, which Gata quickly repaid with funds embezzled from the Second, Third and Fourth Tranches. **Exhibit 12**, 2.

33. Gata also wrote himself and cashed other highly suspicious and unusual checks. For instance, in July 2017, he wrote himself three checks for \$50,000 each on the same day for “lobbying fees”.¹⁴ **Exhibit 16**, 2262, 2264, and 2270. Gata deposited two of these checks into the Gata UNFCU Checking Account. **Exhibit 10**, 187. The other was deposited in an account that appears to be held at TD Bank (based on the address of the branch in the cleared check). **Exhibit 16**, 2271.

34. Over the coming months, the DRC Mission continued to wire large amounts to the Gata UNFCU Checking Account from the DRC Mission Citibank Account. **Exhibit 14**, 7-9.

<u>Date</u>	<u>Amount of Wire</u>
7/7/17	\$100,000.00
10/19/17	\$250,000.00
12/27/17	\$60,000.00

35. No purpose was given for these transfers, and, again, these transfers were far in excess of the compensation Gata had represented to the UNFCU that he was paid by the DRC

¹⁴ The checks note that they are for “*frais lobbie*” in French.

Mission. Attached hereto as **Exhibit 28** are true and correct copies of representations Gata made to the UNFCU regarding his income.

36. Plaintiff's investigation, in conjunction with the bank records, demonstrates that the DRC compensated Gata for his essential role in the DRC Embezzlement Enterprise, given that he was the sole signatory for, and controlled, the DRC Mission bank accounts. To obtain his cooperation and assistance in stealing the above-described amounts (including those stolen by a close associate of former President Kabila and his family, as detailed at ¶¶ 25-28, *supra*) through the DRC Mission Accounts, the DRC permitted Gata to join the DRC Embezzlement Enterprise and to embezzle some of the DRC's money for himself and select co-conspirators at the DRC Mission. Gata then used his portion of the embezzled funds, *inter alia*, to purchase residential real estate and repay his mortgage on the same, make large unexplained cash withdrawals, and pay his credit cards. For instance, \$98,931.52 of the \$100,000 wired by the DRC Mission to the Gata UNFCU Checking Account on July 7, 2017 was transferred to the Gata UNFCU Savings Account on July 11, 2017 (the balance of the \$100,000 wire remained in the Gata UNFCU Checking Account where it was used to pay Gata's UNFCU credit card bill). **Exhibit 10**, 185 and 187. These funds were commingled in Gata UNFCU Savings Account with funds from the Third and Fourth Tranches, which were embezzled by Gata in September 2017. **Id.**, 197. In December 2017, Gata used these funds from his UNFCU Savings Account to repay \$300,000 of his mortgage from the UNFCU. **Id.**, 208 and **Exhibit 12**, 16. Gata also used the funds to pay off a UNFCU credit card balance of \$5,156.80, which had largely accrued the prior month and on which he had previously made a partial payment. The credit card balance included a charge from St. John's University for \$5,152.50 and Geico auto insurance for \$281.37. **Exhibit 10**, 197 and **Exhibit 11**, 26-30.

THIRD AND FOURTH TRANCHES

37. In June and December 2016, two payments from the UN, totaling \$1,105,303.50¹⁵, were deposited into the DRC Mission’s Citibank Account – the Third Tranche. **Exhibit 13**, 10 and 11. On March 20, 2017, the UN transferred another \$3,240,212.56 into the DRC Mission’s Citibank Account—the Fourth Tranche. **Id.**, 13. The Third and Fourth Tranches were then wired from the DRC Mission’s Citibank account to the newly opened DRC Mission UNFCU Savings Account. **Exhibit 14**, 4-5 and **Exhibit 9**, 32 and 34. According to the wire transfers from the DRC Mission Citibank Account to the DRC Mission UNFCU Savings Account, these wires were “*fonds UN peacekeeping*” or UN peacekeeping funds. **Exhibit 14**, 4-5. The Third and Fourth Tranches total \$4,345,516.06.¹⁶

38. But the DRC did not use this \$4.3m for peacekeeping. Rather, nearly all of it was embezzled by Gata and certain other DRC government officials and employees of the DRC

15

<u>Date</u>	<u>Amount of Wire from UN</u>
6/15/16	\$717,132.00
12/12/16	\$388,171.50
TOTAL:	\$1,105,303.50

16

<u>Date</u>	<u>Amount of Wire from UN</u>
6/15/16	\$717,132.00
12/12/16	\$388,171.50
3/20/17	\$3,240,212.56
TOTAL:	\$4,345,516.06

Mission (“New York Co-Conspirators”).¹⁷ To accomplish the theft, Gata made large transfers out of the new DRC Mission UNFCU Savings Account to himself and the other New York Co-Conspirators. To avoid overwhelming the analysis of these Tranches with information on the additional New York Co-Conspirators, they are addressed at ¶ 53 below.

39. In correspondence with the UNFCU, some of these transfers to the New York Co-Conspirators were described by Gata as “pension funds” or “supplement[s] to pension”. **Exhibit 19.**

40. Other transfers contained no purported justification, such as the \$1.5m wire made to the Gata UNFCU Savings Account on September 27, 2017. These descriptions of “pension funds” (where they exist) are nothing more than a continuation of the DRC Mission’s pattern of wire fraud in furtherance of the DRC Embezzlement Enterprise, as evidenced by the DRC Mission’s fraudulent wire of the Second Tranche to the “DRC Central Bank”, when in fact the proceeds went to the account of a company owned by Kabila’s sister and sister-in-law and from which the manager of Kabila’s own company withdrew cash (as discussed at ¶¶ 25-28, *supra*).

41. The evidence that these are not *bona fide* pension payments is overwhelming. First, the wire from the DRC Mission Citibank Account to the DRC Mission UNFCU Savings Account described them as UN peacekeeping funds. Secondly, Plaintiff has reviewed over six years of bank statements and checks from the DRC Mission Citibank Account (predating the

17

Third and Fourth Tranches – Uses	Amount
Embezzled by Gata	\$1,750,000.00
Embezzled by Other Co-Conspirators (Known)	\$1,950,000.00
Embezzled by Other Co-Conspirators (Inferred)	\$250,000.00
TOTAL:	\$3,950,000.00

commencement of the payment of these purported pension funds) and can find not a solitary pension payment among thousands of payments. Thirdly, Plaintiff has reviewed many thousands of bank records relating to the DRC government and cannot locate any other pension payments made to the private bank accounts of DRC officials.

42. Fourthly, scratching beneath the surface and comparing the recipients of these so-called pension funds to contemporaneous UN directories of DRC Mission representatives, one can determine that these “pensions” were not paid to certain senior, long-serving diplomats, but rather to more junior diplomats who had served for less time, as well as to non-diplomatic support staff. Attached as **Exhibit 30** is a true and correct copy of pages from a directory published by the UN in November 2017 listing the members of the DRC Mission and their positions. It is simply not credible that, were these *bona fide* pension payments, the second highest-ranking diplomat would receive none, yet, the administrative assistant, who just happened to be privy to the DRC Mission’s banking information, would receive several hundred thousand dollars originating with the Tranches of UN funds.

43. Lastly, these payments also had no characteristics of *bona fide* pension contributions—they were not paid to a pension plan, but rather private bank accounts, and were lump sum payments made to individuals while they were still employed and continued to be employed by the DRC Mission (and not a payment from a *bona fide* pension plan when a person retires). For all these reasons, the evidence is overwhelming that these payments were not genuine pension payments; rather, such descriptions were nothing more than fraudulent misrepresentations to the UNFCU to induce it to transfer DRC Mission funds to the New York Co-Conspirators.

44. Outside of a \$5,000 opening deposit and two checks totaling \$7,590, all of the deposits made into the DRC Mission UNFCU Savings Account originated with the UN. **Exhibit**

9, 19 and 70. In respect of the Third and Fourth Tranche, the credits and debits shown in the table below were made to and from the DRC Mission UNFCU Savings Account. The material credits – the Third and Fourth Tranche – were \$4,340,516.06, and the total debits are -\$4,294,835.77, leaving a balance of \$45,680.29 of the Third and Fourth Tranche in the UNFCU Savings Account.

<u>Date</u>	<u>Amount</u>	<u>Description</u>
3/20/17	\$1,100,303.50	Third Tranche from UN (via DRC Mission Citibank Account)
3/24/17	\$3,240,212.56	Fourth Tranche from UN (via DRC Mission Citibank Account)
4/13/17	-\$40,000.00	Cashier's check - beneficiary unknown
9/12/17	-\$500,000.00	"Pension Funds" to New York Co-Conspirator
9/12/17	-\$500,000.00	"Pension Funds" to New York Co-Conspirator
9/12/17	-\$350,000.00	"Pension Funds" to New York Co-Conspirator
9/12/17	-\$300,000.00	"Pension Funds" to New York Co-Conspirator
9/12/17	-\$200,000.00	"Pension Funds" to New York Co-Conspirator
9/22/17	-\$291,790.02	Cashier's check - beneficiary unknown
9/25/17	-\$13,045.75	Cashier's check - beneficiary unknown
9/26/17	-\$1,500,000.00	no reason given for transfer; transferred to Gata
1/11/18	-\$200,000.00	no reason given for transfer; transferred to Gata
1/11/18	-\$50,000.00	no reason given for transfer
1/11/18	-\$50,000.00	no reason given for transfer
1/11/18	-\$50,000.00	no reason given for transfer
1/11/18	-\$50,000.00	no reason given for transfer
1/11/18	-\$50,000.00	no reason given for transfer
3/15/18	-\$50,000.00	"Supplement to Pension Funds"; transferred to Gata
3/15/18	-\$20,000.00	"Supplement to Pension Funds" to New York Co-Conspirator
3/15/18	-\$20,000.00	"Supplement to Pension Funds" to New York Co-Conspirator
3/15/18	-\$20,000.00	"Supplement to Pension Funds" to New York Co-Conspirator
3/15/18	-\$20,000.00	"Supplement to Pension Funds" to New York Co-Conspirator
3/15/18	-\$20,000.00	"Supplement to Pension Funds" to New York Co-Conspirator

45. Outside of the three cashier's checks (beneficiaries unknown), one will notice a pattern. Debits are made in groups of six – the number of New York Co-Conspirators. In certain cases, the debits noted in the DRC Mission UNFCU Savings Account statements are the subject of correspondence from Gata to the UNFCU. **Exhibit 18**. In each of these letters, Gata lists some

or all of the New York Co-Conspirators and claims the transfers are for “pension funds” or “supplement to pension funds”. *Id.*

46. In other instances, the debits do not note the beneficiary or purported purpose, but one can always locate a corresponding deposit in Gata’s accounts (e.g., the \$200,000 debit made on January 11, 2018 from the DRC Mission UNFCU Savings Account has a corresponding credit in the Gata UNFCU Savings Account). **Exhibit 9**, 2; **Exhibit 10**, 213. There are five other transfers on this same date, which from the pattern evidenced by Gata’s letters to the UNFCU, leads one to infer these transfers (totaling \$250,000) were made to the other New York Co-Conspirators. **Exhibit 9**, 2. That is, of the \$4,340,516.06 from the Third and Fourth Tranches, \$1,750,000 is definitively shown by bank records to have been transferred to Gata, **Exhibit 10**, 197, 213 and 221; \$1,950,000 of the same was definitively transferred to other New York Co-Conspirators, **Exhibit 18**; \$250,000 is inferred to have been transferred to the other New York Co-Conspirators, **Exhibit 9**, 2, and \$344,835.77 was withdrawn in the form of cashier’s checks, beneficiaries unknown, **Exhibit 9**, 51 and 134. The balance of the Third and Fourth Tranches, which remained in the DRC UNFCU Savings Account, was comingled with the Fifth and Sixth Tranches and later embezzled by the New York Co-Conspirators.

FIFTH AND SIXTH TRANCHES

47. The UN made two additional payments to the DRC Mission UNFCU Savings Account. On June 18, 2018, the UN transferred \$240,595.92 to that account, which still held a small portion of the Third and Fourth Tranches on deposit. **Exhibit 9**, 85. On June 20, 2018, six debits totaling \$240,000 were made from the DRC Mission UNFCU Savings Account. **Exhibit 9**, 84. The amount of the largest of these debits—\$60,000—was deposited into the Gata UNFCU Accounts on the same date. **Exhibit 10**, 233. In light of the pattern established above (six New

York Co-Conspirators, debits occurring in groups of six), it is inferred that the balance of these debits went to the other New York Co-Conspirators.

48. On July 24, 2018, another six debits totaling \$13,000 were made from the DRC Mission UNFCU Savings Account. **Exhibit 9**, 99. The amount of the largest of these debits - \$3,000 – was deposited into the Gata UNFCU Accounts on the same date. **Exhibit 10**, 237. In light of the pattern established above (six New York Co-Conspirators, debits occurring in groups of six), it is inferred that the balance of these debits went to the other New York Co-Conspirators.

49. Following these debits, the DRC Mission UNFCU Savings Account had a balance of \$47,012.79. **Exhibit 9**, 99. On August 16, 2018, two debits were made from the DRC Mission UNFCU Account – one for \$37,000 and another for \$10,000. **Exhibit 9**, 116. On that same date, \$37,000 was deposited into the Gata UNFCU Accounts. **Exhibit 10**, 241. It is inferred that one of the other New York Co-Conspirators received \$10,000, but Plaintiff does not currently possess the information to identify which one. Including interest accrued on the account balance, at the end of August 2018, the balance of the DRC Mission UNFCU Savings Account was \$50.32. **Exhibit 9**, 116.

50. On April 12, 2019, the UN wired \$452,528.66 to the DRC Mission UNFCU Savings Account. **Exhibit 9**, 57. Ten days later, Gata instructed the UNFCU to make six “supplement to pension payments” totaling \$425,000 to him and the other New York Co-Conspirators. **Exhibit 18**, 4.

51. On July 8, 2019, Gata instructed the UNFCU to make four “supplement to pension payments” totaling \$27,500 to four of the New York Co-Conspirators, meaning a total of \$452,500 of the \$452,528.66 from the Sixth Tranche of UN Funds, was transferred to the personal accounts of the New York Co-Conspirators. **Id.**, 5.

SUMMARY OF FUNDS EMBEZZLED BY GATA

52. The table below summarizes the total amount embezzled by Gata, as detailed in the preceding paragraphs.

<u>Date of Deposit</u>	<u>Amount</u>	<u>Description</u>
4/3/17	\$100,000.00	DRC Mission Citibank Account wire to Gata UNFCU Checking Account for house down payment
7/7/17	\$100,000.00	DRC Mission Citibank Account wire to Gata UNFCU Checking Account; no purpose given
7/24/17	\$50,000.00	DRC Mission Citibank Account check 5877 for "lobbying fees" to Gata UNFCU Accounts
7/24/17	\$50,000.00	DRC Mission Citibank Account check 5876 for "lobbying fees" to Gata UNFCU Accounts
7/31/17	\$50,000.00	DRC Mission Citibank Account check 5875 for "lobbying fees" to Gata at TD Bank
9/26/17	\$1,500,000.00	DRC Mission UNFCU Savings transfer to Gata UNFCU Savings Account; no purpose given
10/19/17	\$250,000.00	DRC Mission Citibank Account wire to Gata UNFCU Checking Account; no purpose given
12/27/17	\$60,000.00	DRC Mission Citibank Account wire to Gata UNFCU Checking Account; no purpose given
1/11/18	\$200,000.00	DRC Mission UNFCU Savings to Gata UNFCU Savings Account
3/15/18	\$50,000.00	DRC Mission UNFCU Savings to Gata UNFCU Savings Account
6/20/18	\$60,000.00	DRC Mission UNFCU Savings to Gata UNFCU Savings Account
7/24/18	\$3,000.00	DRC Mission UNFCU Savings to Gata UNFCU Savings Account
8/16/18	\$37,000.00	DRC Mission UNFCU Savings to Gata UNFCU Savings Account
4/22/19	\$110,000.00	DRC Mission UNFCU Savings to Gata UNFCU Savings Account
TOTAL	\$2,620,000.00	

THE NEW YORK CO-CONSPIRATORS (AND THOSE WHO DID NOT PARTICIPATE)

53. DRC Mission officials who refused to play a role in the DRC Embezzlement Enterprise were not rewarded with embezzled UN funds. For example, Charlotte Omoy Malenga,

(“**Malenga**”) was the DRC Mission’s Minister Counselor of the DRC Mission, the second to Gata in rank. **Exhibit 29**, 13. Malenga did not participate in the DRC Embezzlement Enterprise’s illicit scheme and thus received none of the UN funds. Cancelled checks show that Malenga was employed by the DRC Mission since at least September 2014 and remained there until September 2018. **Exhibit 16**, 8, 2344, 2374, and 2446. While many of the DRC Mission cronies received embezzled UN funds, again, thinly veiled as “Pension Funds” or “Supplement to Pension Funds”, Malenga received no such payments despite her senior role. In addition, Serge Ngoy Banza, (“**Banza**”) the sixth-ranking official and the Attaché of the DRC Mission, did not participate in the DRC Embezzlement Enterprise and thus received none of the spoils that Gata handed out to the New York Co-Conspirators. **Exhibit 29**, 13. Banza arrived at the DRC Mission in early 2016. **Exhibit 16**, 1270. As of April 2021, Banza was still employed by the DRC Mission. **Exhibit 9**, 67. In contrast to Malenga and Banza, the New York Co-Conspirators were handsomely rewarded for their role in the DRC Embezzlement Enterprise. The DRC Embezzlement Enterprise’s New York Co-Conspirators include:

- a. Paul Losoko Efambe Empole (“**Empole**”), at the time of his embezzlement of the UN funds, was the third ranking member of the DRC Mission who held the title of Minister Counselor and Charge d’Affairs. **Exhibit 29**, 13. Plaintiff’s investigation shows that Empole received \$605,000¹⁸ of UN funds from the DRC Embezzlement

18

<u>Date</u>	<u>Amount</u>	<u>Description</u>
9/12/17	\$500,000.00	"Pension Funds"
3/15/18	\$20,000.00	"Supplement to Pension Funds"
4/22/19	\$85,000.00	"Supplement to Pension Funds"
TOTAL:	\$605,000.00	

Enterprise and infers¹⁹ he received an additional \$92,000²⁰. **Exhibit 18**; **Exhibit 9**, 85, 99, 116, and 213. The vast majority, if not all, of these funds were deposited in Empole's savings account # [REDACTED] 0001 at the UNFCU. **Exhibit 18**.

- b. Victoria Lieta Liolocha ("**Liolocha**") held the title of Second Counselor and was the fourth-ranking official and an active participant in the DRC Mission and its role in the DRC Embezzlement Enterprise. **Exhibit 29**, 13. Plaintiff's investigation show Liolocha received \$430,000²¹ of UN funds from the DRC Mission and records infer she received at least an additional \$82,000²². **Exhibit 18**; **Exhibit 9**,

¹⁹ In certain cases, while the DRC Mission UNFCU Savings Account statements show transfers in groups of six (i.e., the number of New York Co-Conspirators), the beneficiaries are not identified. To avoid overcounting funds that were transferred to each of the New York Co-Conspirators, Plaintiff has inferred that each of them received the smallest possible amount. I.e., where the records show, for instance, \$40,000 transfers and \$30,000 transfers, Plaintiff's calculations assume each received \$30,000 even though some did receive \$40,000. That is why "at least" is used to describe the inferred amounts.

²⁰

<u>Date</u>	<u>Amount</u>
1/11/18	\$50,000.00
6/20/18	\$30,000.00
7/24/18	\$2,000.00
8/16/18	\$10,000.00
TOTAL:	\$92,000.00

²¹

<u>Date</u>	<u>Amount</u>	<u>Description</u>
9/12/17	\$350,000.00	"Pension Funds"
3/15/18	\$20,000.00	"Supplement to Pension Funds"
4/22/19	\$55,000.00	"Supplement to Pension Funds"
7/8/19	\$5,000.00	"Supplement to Pension Funds"
TOTAL:	\$430,000.00	

²²

<u>Date</u>	<u>Amount</u>
1/11/18	\$50,000.00
6/20/18	\$30,000.00
7/24/18	\$2,000.00
TOTAL:	\$82,000.00

85, 96, 115, and 212. In mid-2015, Liolocha arrived at the Permanent Mission (that is, after Malenga, who did not participate in the scheme). **Exhibit 16**, 858. The vast majority, if not all, of these funds were deposited in Liolocha's savings account # [REDACTED] 0001 at the UNFCU. **Exhibit 18**.

- c. Hippolyte Kingonzila Mfulu ("Mfulu") was the fifth-ranking official at the Permanent Mission and held the title of First Secretary at the DRC Mission. **Exhibit 29**, 13. Documentation definitively shows Mfulu received \$380,000²³ of UN funds for his role in the DRC Embezzlement Enterprise and infers he received at least an additional \$82,000²⁴. **Exhibit 18**; **Exhibit 9**, 85, 99, 116, and 213. Mfulu also arrived at the DRC Mission in mid-2015 (also after Malenga). **Exhibit 16**, 836. The vast majority, if not all, of these funds were deposited in Mfulu's savings account # [REDACTED] 0001 at the UNFCU. **Exhibit 18**.
- d. Bianza Therese Yvette Mpinga ("Mpinga") is the assistant to Gata and the manager of the DRC Mission's Accounts. (Mpinga is not a signatory to the accounts.)

23

<u>Date</u>	<u>Amount</u>	<u>Description</u>
9/12/17	\$300,000.00	"Pension Funds"
3/15/18	\$20,000.00	"Supplement to Pension Funds"
4/22/19	\$55,000.00	"Supplement to Pension Funds"
7/8/19	\$5,000.00	"Supplement to Pension Funds"

TOTAL: \$380,000.00

24

<u>Date</u>	<u>Amount</u>
1/11/18	\$50,000.00
6/20/18	\$30,000.00
7/24/18	\$2,000.00

TOTAL: \$82,000.00

Exhibit 6, 2. Mpinga's Gmail account is given as the member email address for the DRC Mission's UNFCU Accounts. **Exhibit 9**, 83. While Mpinga is an employee of the DRC Mission, she does not hold a diplomatic position according to the UN directory. **Exhibit 29**, 13. Plaintiff's investigation shows that Mpinga received \$589,000²⁵ of UN funds from the DRC Mission and infers she received an additional \$82,000²⁶. **Exhibit 18; Exhibit 9**, 85, 99, 116, and 213. The vast majority, if not all, of these funds were deposited in Mpinga's savings account # [REDACTED] 0001 at the UNFCU. *Id.*

- e. Marie Huguette Nkus Ngung's ("Ngung") position at the Permanent Mission has never appeared in a UN directory of accredited diplomats to the UN. Nevertheless, Plaintiff's investigation definitively shows Ngung received \$288,500²⁷ of UN

25

<u>Date</u>	<u>Amount</u>	<u>Description</u>
9/12/17	\$500,000.00	"Pension Funds"
3/15/18	\$20,000.00	"Supplement to Pension Funds"
4/22/19	\$65,000.00	"Supplement to Pension Funds"
7/8/19	\$4,000.00	"Supplement to Pension Funds"
TOTAL:	\$589,000.00	

26

<u>Date</u>	<u>Amount</u>
1/11/18	\$50,000.00
6/20/18	\$30,000.00
7/24/18	\$2,000.00
TOTAL:	\$82,000.00

27

<u>Date</u>	<u>Amount</u>	<u>Description</u>
9/12/17	\$200,000.00	"Pension Funds"
3/15/18	\$20,000.00	"Supplement to Pension Funds"
4/22/19	\$55,000.00	"Supplement to Pension Funds"
7/8/19	\$13,500.00	"Supplement to Pension Funds"

funds from the DRC Mission and infers she received an additional \$82,000²⁸.

Exhibit 18; **Exhibit 9**, 85, 99, 116, and 213. The vast majority, if not all, of these funds were deposited in Ngung's savings account # [REDACTED] 0002 at the UNFCU. **Exhibit 18**.

THE FATE OF THE FIRST TRANCHE

54. As previously mentioned at ¶ 20, Plaintiff believes there is substantial evidence to suggest that the First Tranche of \$13,391,928.00 was also embezzled. To begin, Plaintiff has shown that the rest of the Tranches have been embezzled. Secondly, the account to which the DRC Mission wired the First Tranche—the DRC Central Bank Rawbank Account—has been used in another embezzlement scheme contemporaneous with the transfer of the First Tranche. The DRC Central Bank Rawbank Account also received at least two so-called payments of “Gecamines Tax Advances.” Attached hereto as **Exhibit 30** are letters from Gecamines directing its bank to make tax advance payments to the DRC Central Bank Rawbank Account.

55. Gecamines is a mining company wholly owned by the DRC. Gecamines has not made a profit in decades and has no tax obligations, nor is it likely to in the foreseeable future. These and other “tax advance” payments made by Gecamines to the DRC Central Bank, which total hundreds of millions of dollars, do not appear on contemporaneous DRC Central Bank accounting records. Rather, the line item for Gecamines' tax payments is zero. Attached hereto

TOTAL: \$288,500.00

28

<u>Date</u>	<u>Amount</u>
1/11/18	\$50,000.00
6/20/18	\$30,000.00
7/24/18	\$2,000.00
TOTAL:	\$82,000.00

as **Exhibit 31** are DRC Central Bank records showing, inter alia, that Gécamines made no tax payments between 2003-2016.²⁹

56. This particular scheme of embezzling DRC funds by disguising the payments as “tax advances”, has been reported by The New York Times:

The most suspicious documents to emerge recently include a string of bank transfers to different accounts at different banks with the notation that they were “advance tax payments” from Gécamines, a struggling state-controlled mining company, for Congo’s central bank. Starting late last year, the transfers reveal anomalies like instructions that \$8 million be withdrawn from the teller — in cash — on behalf of the central bank.

“That makes no sense,” said a former employee of Congo’s central bank who spoke on the condition of anonymity, saying he could be killed if he was identified. “We don’t get cash from a commercial bank. We import our own cash. We have a service in Switzerland that does that.”

Analysts at the Sentry, an investigative arm of the Enough Project, said that during the time of the supposed Gécamines transfer of \$95.7 million to the central bank, the central bank’s foreign reserves actually dropped — to \$1.17 billion from \$1.47 billion — pushing up inflation and causing issues for Congo’s economy. At the same time, Mr. Kabila’s government drastically cut spending on health care and the few services it provides.

Sentry analysts said they were curious how Gécamines, a company with endless management problems, would have that much cash on hand for advance tax payments when thousands of employees had not been paid in months. Documents showed that Gécamines lost \$82.9 million in 2014. Mining executives said bigger, more profitable companies always paid much less in advance taxes.

Attached hereto as **Exhibit 32** is a true and correct copy of the news article: *As President Joseph Kabila Digs In, Tensions Rise in Congo*, NY TIMES, 17 Dec. 2016.

²⁹ These records contain a heading “*autres recettes fiscales*”, or in English, “other tax receipts”. Item (e) under this heading is labeled Gécamines. These records cover the years 2003-2016 and show that Gécamines paid no tax during this period.

57. In addition to the DRC Central Bank Rawbank Account being associated with other vanishing DRC funds, the DRC Central Bank has also transferred tens of millions of dollars to companies owned and controlled by Kabila's closest associates and family members. Attached hereto as **Exhibit 33** is a true and correct copy of the news article *DRC Company Promised Cheap Food, Delivers Stolen Money*, ORGANIZED CRIME AND CORRUPTION REPORTING PROJECT, 8 Nov. 2017. In addition, bank records show that Sud Oil—the Kabila-linked company which received \$6,809,854 from the Second Tranche that was fraudulently camouflaged as a wire to the DRC Central Bank—received \$7,500,000 from the DRC Central Bank just months after the DRC Mission wired \$13,391,928 to DRC Central Bank Rawbank Account. **Exhibit 22**, 5.

CALCULATION OF 2004 JUDGMENT DEBT AS OF AUGUST 1, 2021

58. Attached as Exhibit 2 to the Gluck Decl. is a true and correct copy of a December 21, 2015 order by the United District Court for the District of Columbia reviving a judgment issued by the court on September 19, 2004 in the amount of \$11,725,844.96, together with 1) interest at the annual rate of 9% on the sum of \$11,179,266.36, to be calculated based on the amount of each overdue installment included in said sum, starting on the respective due date and up to the date of full payment, plus 2) interest at the annual rate of 5% on the sum of \$546,578.60, starting on March 4, 2001 and up to the date of full payment, together with non-interest bearing fees and costs totaling 3) \$413,900.00 (the “2004 Judgment”). To date, Plaintiff has made recoveries totaling \$3,336,757.75. As of August 1, 2021, the following amounts are still owed by the Judgment Debtor under the 2004 Judgment, bringing the 2004 Judgment debt to \$40,271,946.66³⁰ (the “2004 Judgment Debt”):

³⁰ Although Judgment Debtors have executed various debt acknowledgements acknowledging interest is to be calculated on a compound basis (“Debt Acknowledgments”), this has subsequently been disputed by Judgment Debtors, which have claimed simple interest should be used. Since the quantum of the 2004 Judgment Debt when calculated on a simple interest basis is far in excess of the value of the assets Plaintiff seeks to attach in this jurisdiction,

<u>Description</u>	<u>Amount</u>
Item 1 Principal	\$11,179,266.36
Item 1 Interest	\$30,911,221.54
Item 2 Principal	\$546,578.60
Item 2 Interest	\$557,737.91
Item 3 Fees and Costs	\$413,900.00
Recoveries	-\$3,336,757.75
2004 Judgment Debt as of August 1, 2021	\$40,271,946.66

59. In sum, the DRC Embezzlement Enterprise has deprived Plaintiff of substantial amounts of interest and access to its property since the Judgements have been issued. Moreover, Defendants have given no indication that they intend to facilitate the transfer of Plaintiff's property to satisfy the Judgments. Accordingly, Plaintiff now seeks to restrain any and all funds related to the DRC Embezzlement Enterprise within this district.

Plaintiff is using simple interest calculations for the present purposes in an attempt to circumscribe the issues in the present matter. For the avoidance of doubt, by using simple interest calculations in the present matter, Plaintiff is not waiving any of its rights to rely upon the Debt Acknowledgments or otherwise challenge Judgment Debtors' subsequent recalculation of the 2004 Judgment Debt on a simple interest basis.

Dated: New York, NY
August 10, 2021

Peter Grossman

Peter Grossman